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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,254	11/17/2003	Jon F. Jensen	JENJO122024	5000

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EXAMINER
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NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/715,254

**Applicant(s)**

JENSEN, JON F.

**Examiner**

Son T. Nguyen

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-16 and 21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 2-16 and 21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 21,2-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Herold (EP0098474) in view of Powell et al. (US 612073).

For claim 21, Herold teaches in figs. 3-6 a stackable planter, comprising: a plurality of planter trays 12,13, each planter tray having an annular inner rib 19,19a defining a center portion of the planter tray; wherein the center portion of at least one planter tray has an aperture (the top planter tray 13) extending through the bottom of the planter tray; wherein the center portion of at least one other planter tray (the bottom planter tray at bottom of ref. 15) has a bottom wall extending across the center portion of the planter tray; and wherein each of the annular inner ribs of the planter trays have the same shape allowing the planter trays to be stacked in an interchangeable order, such that when stacked, the annular inner ribs of the planter trays define a center portion of the stackable planter having a variable amount of volume, the depth of the center portion of the stackable planter depending on the location in the stackable planter of a planter tray with a bottom wall, whereby one or more plants can be planted in the center portion of the stackable planter (note, the structure of refs. 15,15a can or capable of containing plants if soil and plants were to be planted). However, Herold is

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silent about each planter tray having at least one planter cup at a periphery for holding soil.

Powell et al. teach a stackable planter comprising a plurality of trays, each tray having at least one planter cup 64 at a periphery. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of cups as taught by Powell et al. at a periphery of each of the tray of Herold in order to increase numbers of plants in a given space (see abstract of Powell et al.).

For claim 2, Herold as modified by Powell (emphasis on Herold) further teaches wherein the inner rib is sized to separate the at least one planter cup from the aperture of the center portion.

For claim 3, Herold as modified by Powell (emphasis on Herold) further teaches wherein the inner rib is configured to retain soil within the at least one planter cup separate from the center portion.

For claim 4, in addition to the above, Powell et al. further teach wherein a planter tray of the plurality of planter trays is configured to nest within a second planter tray while in a collapsed condition (see fig. 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a planter tray of the plurality of planter trays is configured to nest within a second planter tray while in a collapsed condition as further taught by Powell et al. in the stackable planter system of Herold as modified by Powell et al. in order to save space in storing the system by nesting the trays.

For claim 5, Herold as modified by Powell et al. (emphasis on Powell) further teaches wherein the planter cup is configured with an outer profile selected from the group consisting of round, oval, rectangular, diamond shaped, and polygon.

For claim 6, Herold as modified by Powell (emphasis on Herold) further teaches wherein a base 25 of at least one planter tray 13 is configured to removably engage an upper portion of a second planter tray 12.

For claim 7, Herold as modified by Powell (emphasis on Herold) further teaches an engagement mechanism 25,23,24,22,19 configured to secure the plurality of planter trays in a terraced configuration.

3. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Herold as modified by Powell et al. as applied to claim 21 above, and further in view of Farkas (US 4614056).

Herold as modified by Powell et al. is silent about the tray is further configured to suspend from a support.

Farkas teaches a stackable planter system comprising planter trays 1 that are configured to be suspended from a support by providing suspension mechanism and S-hook. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ suspension mechanism and S-hook as taught by Farkas in the planter system of Herold as modified by Powell et al. in order to suspend the system from a support surface.

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4. **Claims 9-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Herold as modified by Powell et al. as applied to claim 21 above, and further in view of Watson (GB2173984A).

Herold as modified by Powell et al. is silent about a cart to support the plurality of planter trays, the cart having a rim and a plurality of wheels.

Watson teaches a stackable planter system comprising a plurality of trays 2 being supported on a cart 14,16 having a rim 16 and wheels 15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cart with a rim and wheels as taught by Watson to support the tray system of Herold as modified by Powell et al. in order to allow a user to move the system to another location by rolling the system on the wheels of the cart.

5. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Herold as modified by Powell et al. and Watson as applied to claims 21,9 above, and further in view of Mills (US 3686791).

Herold as modified by Powell et al. and Watson is silent about a plurality of stakes attached to the cart.

Mills teaches a stackable planter system comprising a plurality of trays and stakes X,X' to hold down the trays. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the stakes as taught by Mills to hold down the trays in the system of Herold as modified by Powell et al. and Watson from moving or dislodging from each other. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to

attach the stakes as taught by Mills to the cart of Herold as modified by Powell et al. and Watson so as to hold down the trays while moving them.

6. **Claims 13-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Herold as modified by Powell et al. as applied to claim 21 above, and further in view of Lee (US 5440836).

Herold as modified by Powell et al. is silent about a watering tank having a port, an opening to receive a plug, and an extension.

Lee teaches a stackable planter system comprising a watering tank (the smaller top container as shown in fig. 3) configured to fit within the center portion of a planter tray 90 wherein the watering tank comprises a port (see arrow where water comes out to the next planter) configured to distribute water to the trays, wherein the watering tank further comprises an opening (where pipe 102 comes in) configured to receive water and a plug (the plug around pipe 102 opening coming into the tank) for the opening configured to measure nutrients, wherein the tank comprises an extension 102 configured to fit downward through the center portion of at least one tray stacked below the watering tank.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a watering tank having a port and an opening to receive a plug as taught about by Lee in the planter system of Herold as modified by Powell et al. in order to provide water/nutrient to the plants grown in the planter trays. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an extension as further taught by Lee in the planter

system of Herold as modified by Powell et al. & Lee in order to replenish the tank with water/nutrient pumping from the pump 104 of Lee.

***Response to Arguments***

7. Applicant's arguments with respect to claims 2-16 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn